

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-52911; File No. SR-PCX-2005-129)

December 7, 2005

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Relating to the Approval of Securities that Underlie Options Traded on the Exchange.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on November 23, 2005, the Pacific Exchange, Inc. (“PCX” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On December 7, 2005, PCX filed Amendment No. 1 to the proposed rule change.³ PCX filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(6) thereunder,⁵ which renders the proposal, as amended, effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes changes to PCX rules pertaining to the approval of securities that underlie options traded on the Exchange. Specifically, the Exchange

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Form 19b-4 dated December 7, 2005 which replaced the original filing in its entirety (“Amendment No. 1”). Amendment No. 1 made clarifying changes and corrected typographical errors in the original filing.

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(6).

proposes to eliminate Rule 5.6(b)(5) and amend Rule 5.6(b)(6) and Rule 5.3(b). A copy of the proposed rule change is available on the PCX Web site, (www.pacificex.com), at the PCX's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this Amendment No. 1 is to make clarifying changes and correct typographical in the original filing. This Amendment No. 1 replaces the original rule filing in its entirety. The Exchange proposes changes to PCX rules pertaining to the approval of securities that underlie options traded on the Exchange. Specifically, the Exchange proposes to eliminate Rule 5.6(b)(5) and amend Rule 5.6(b)(6) and Rule 5.3(b).

PCX Rule 5.6(b) sets forth various situations under which an underlying security previously approved for options trading will in usual circumstances be deemed to no longer meet Exchange requirements for the continuance of such approval. In such circumstances, Rule 5.6(b)(5) provides that the Exchange will not open for trading any additional series of options in that class and may also limit any new opening transactions

in those options series that have already been opened. The Exchange proposes to eliminate this provision because (1) it limits investors' ability to use options to hedge existing equity positions in such securities, and (2) it is not necessary in the context of the rest of Rule 5.6(b).

First, Rule PCX 5.6(b)(5) can and does impact investors' interests by preventing them from using new options series to hedge positions that may hold in the underlying security of companies that fail to make timely reports required by the Act. The Exchange states that such a restriction is inconsistent with the rules and regulations in the markets for the underlying securities because no similar trading restriction is placed upon the trading of the underlying security itself. Thus, Rule 5.6(b)(5) only serves to limit the abilities of shareholders in such companies who may wish to hedge their positions with new options series, at a time when the ability to hedge may be particularly important.

The PCX believes that Rule 5.6(b)(5) has outlived any usefulness and now serves to unnecessarily burden and confuse the investing public. This provision was appropriate when it was first implemented when the listing and trading of standardized options was still in its infancy and information pertaining to public companies was not readily available to the general investing public. The Exchange believes that today's listed options market, however, is a mature one with investors who have access to a significant amount of real-time market information to assist them in making informed investment decisions, including information as to whether companies have timely filed reports as required by the Act, and if not, why not. Therefore, the Exchange states that there is no reason to continue limiting investors' ability to trade in options classes, including new series within those classes, simply because a company is not timely in filing its reports.

The Exchange further believes that this restriction is further misplaced, considering that investors are not similarly restricted from buying or selling shares of the underlying security in the equity markets.

Moreover, the Exchange believes that Rule 5.6(b)(5) limits an investor's ability to hedge his underlying stock positions at a time when he may be in most need to protect his investment. The failure of a public company to comply with its reporting requirements under the Act could cause a significant movement in the price of that company's stock. Restricting the Exchange from opening new options series may leave investors without means to hedge their positions with options contracts at strike prices that more accurately reflect the contemporaneous price trends of the underlying stock.

Clearly, new options series on a security should not be permitted to be opened if the underlying security ceases to be an NMS stock. Typically, the Exchange becomes aware of issues that may impact the continued listing of a security well before that security is delisted from its primary market. Exchange staff routinely monitors daily press releases and informational releases disseminated by various entities, such as, the primary listing market of a security and private news services, in an effort to monitor the activities and news items pertaining to the issuers of securities that underlie options traded on the Exchange. In many cases, when an issuer fails to comply with its reporting requirements under the Act, the issuer is given a substantial amount of time to cure this deficiency before the primary listing market actually delists the issuer's security. Many times, the issuer is able to comply without its security ever being delisted. During this period, PCX staff continually monitors the status of the issuer's compliance with its reporting requirements to determine whether the security may be delisted. Finally, the

primary listing market typically issues a press release well in advance of delisting an issuer's security to give investors and other market participants adequate notice.

Given the availability of data and information relating to public issuers of securities in today's markets, and in light of the extensive amount of additional continued listing standards under Rule 5.6(b), waiting until a security is actually delisted by its primary listing market is the appropriate point at which to restrict the issuance of new options series in an options class. Accordingly, the Exchange hereby proposes to eliminate PCX Rule 5.6(b)(5).

Additionally, as a matter of "housekeeping," the Exchange also proposes to clarify Exchange Rule 5.3(b) and Rule 5.6(b)(6), which govern the criteria for the initial and continued listing of options on a particular security, respectively. Both of these provisions include as part of the criteria, a requirement that the underlying security must be a national market system security ("NMS security"). As part of the recently adopted Regulation NMS, among other things, the Commission revised the definition of an NMS security.⁶ Specifically, Rule 600(b)(46) under Regulation NMS defines an NMS security as "any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options." Rule 600(b)(47) also defines an "NMS stock" as any NMS security other than an option. As such, PCX Rule 5.3(b) and Rule 5.6(b)(5) will be amended to reflect these new terms.

⁶ See Securities Exchange Act Release No. 51808 (June 9, 2005); 70 FR 37496 (June 29, 2005).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)⁷ of the Act, in general, and furthers the objectives of Section 6(b)(5),⁸ in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act⁹ and Rule 19b-4(f)(6) thereunder.¹⁰ At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,¹¹ the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The PCX has asked the Commission to waive the 30-day operative delay and the five day pre-filing notice requirement. Because the proposed rule change is based upon a recently approved rule change by the Chicago Board Options Exchange, Incorporated (“CBOE”),¹² and the CBOE’s proposed rule change was published for public notice and comment, the Commission believes that waiving the 30-day operative delay, as well as the five day pre-filing notice requirement, is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹³

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ 17 CFR 240.19b-4(f)(6)(iii).

¹² See Securities Exchange Act Release Nos. 52562 (October 4, 2005), 70 FR 59382 (October 12, 2005) (notice for SR-CBOE-2004-37) and 52779 (November 16, 2005), 70 FR 70902 (November 23, 2005) (approval order for SR-CBOE-2004-37).

¹³ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule’s impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-PCX-2005-129 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, N.E., Washington, DC 20549-9303.

All submissions should refer to File Number SR-PCX-2005-129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such

filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-PCX-2005-129 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Jonathan G. Katz
Secretary

¹⁴ 17 CFR 200.30-3(a)(12).